



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 23, 2012

Ms. Diana Spiller
Public Information Coordinator
Texas Commission on Jail Standards
P.O. Box 12985
Austin, Texas 78711

OR2012-04327

Dear Ms. Spiller:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 449108.

The Texas Commission on Jail Standards (the "commission") received a request for information related to an escape from the Taylor County jail. You state some of the requested information has been released. You claim other responsive information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted. We also have considered the comments we received from the Taylor County Sheriff's Office (the "sheriff's office"). *See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

We first note information has been redacted from the submitted documents. Section 552.301 of the Government Code prescribes procedures a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See id.* § 552.301(a). Section 552.301(e) requires a governmental body to submit the specific information at issue to this office, or representative samples if the information is voluminous, unless the governmental body is authorized to withhold the information pursuant to sections 552.024(c), 552.130(c), 552.136(c), or 552.147(b) of the Government Code or a

previous determination.¹ *See id.* § 552.301(e)(1)(D); Open Records Decision No. 673 (2001) (previous determinations). In this instance, we are generally able to ascertain the nature of the redacted information and will determine whether it is excepted from public disclosure. In the future, however, the commission should refrain from redacting any information from records submitted to this office in connection with a request for a decision under the Act, unless the commission has specific authority to withhold the information pursuant to a statute or a previous determination. *See* Gov't Code §§ 552.301(a), .302.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This exception encompasses federal and state laws that make criminal history record information (“CHRI”) confidential. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *Id.* § 411.082(2). Federal law governs the dissemination of CHRI obtained from the National Crime Information Center network. Federal regulations prohibit the release to the general public of CHRI maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”) and (c)(2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* Open Records Decision No. 565 at 10-12 (1990); *see generally* Gov't Code ch. 411 subch. F. Although sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b). You indicate some of the submitted information constitutes CHRI obtained from the Texas Department of Public Safety. Based on your representation and our review, we conclude the information we have marked is confidential under the federal law and subchapter F of chapter 411 of the Government Code. Therefore, the marked information must be withheld on that basis under section 552.101 of the Government Code. We conclude you have not demonstrated any of the remaining information at issue constitutes CHRI protected by the federal or state laws. Therefore, the commission may not withhold any of the remaining information on that basis under section 552.101.

¹Section 552.024(c) authorizes a governmental body to withhold a current or former official or employee's home address and home telephone number, emergency contact information, social security number, and information that reveals whether the employee has family members, to the extent the employee chooses not to allow public access to the information, without requesting a decision under the Act. *See* Gov't Code § 552.024(c). Section 552.130(c) authorizes a governmental body to redact information protected by section 552.130(a)(1) and (3) without requesting a decision. *See id.* § 552.130(c)-(e). Section 552.136(c) authorizes a governmental body to redact information protected by section 552.136(b) without requesting a decision. *See id.* § 552.136(c)-(e). Section 552.147 authorizes a governmental body to redact a living person's social security number without requesting a decision. *See id.* § 552.147(b).

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). We also find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We have marked a compilation of criminal history information the commission must withhold under section 552.101 of the Government Code in conjunction with common-law privacy. We conclude the remaining information you have marked is not protected by common-law privacy and may not be withheld on that basis under section 552.101.

Section 552.108 of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information related to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474* at 4-5 (1987). Where a non-law enforcement agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld.

You state, and the comments submitted by the sheriff's office confirm, the information you have marked as Exhibit A is related to a pending criminal case. You have informed us, and the sheriff's office's comments confirm, the sheriff's office has asked the commission to withhold Exhibit A from public disclosure. Based on your representations and those of the sheriff's office, we conclude the commission may withhold Exhibit A under section 552.108(a)(1) of the Government Code. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Lastly, we note the remaining information at issue includes driver's license information. Section 552.130 of the Government Code excepts from disclosure information related to a

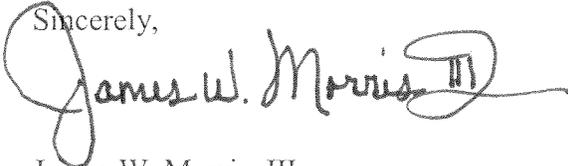
motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country.² See Gov't Code § 552.130(a)(1). The commission must withhold the driver's license information we have marked under section 552.130 of the Government Code.

In summary, the commission (1) must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code; (2) must withhold the criminal history information we have marked under section 552.101 in conjunction with common-law privacy; (3) may withhold the information you have marked as Exhibit A on behalf of the sheriff's office under section 552.108(a)(1) of the Government Code; and (4) must withhold the driver's license information we have marked under section 552.130 of the Government Code. The rest of the information at issue must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 449108

Enc: Submitted documents

c: Requestor
(w/o enclosures)

²This office will raise section 552.130 on behalf of a governmental body, as this section is a mandatory exception to disclosure. See Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

Sheriff Les D. Bruce
Taylor County Sheriff's Office
450 Pecan Street
Abilene, Texas 79602-1692
(w/o enclosures)